

SECTION 7.00**LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC****7.01 Laws to be Observed.****A. General.**

The Contractor shall keep himself fully informed of all state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all orders and decrees of bodies or tribunals, having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract for the work in relation to any law, ordinance, regulation, order or decree; the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall at all times observe and comply with, and shall cause all his/her agents and employees to observe and comply with all existing laws, ordinances, regulations, orders and decrees.

The Contractor, if a foreign corporation, (a corporation established, organized or chartered under laws other than those of the Commonwealth) shall comply with the provisions of Sections 3 and 5 of Chapter 181 of the General Laws as amended. Section 3 provides that the State Secretary shall be appointed for the service of legal process in the case of a foreign corporation doing business in this Commonwealth. Section 5 requires every such corporation to file with the said secretary copies of its charter, certificate of incorporation, a true copy of its bylaws and other information.

The Contractor shall file with the Department with each bid, a certificate from the State Secretary stating that such corporation has complied with Sections 3 and 5 of Chapter 181 and the date of such compliance.

Other out-of-state business organizations, such as individual proprietorship, partnership, etc. shall appoint an agent in this Commonwealth for the service of legal process and furnish a copy of such appointment to the State Secretary prior to the issuance of a Contract by the Department.

It shall be the responsibility of the Contractor to observe and practice to the fullest extent practicable controls, procedures and methods lending themselves to protection of the human and natural environment.

The Contractor shall at all times observe and comply with and shall cause all his/her agents and employees to observe and comply with all existing laws, ordinances, regulations, orders and decrees especially in their relationship to the protection of the total environment.

The Contractor shall not, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, give, offer or promise anything of value to any present or former state employee, for or because of any official act performed or to be performed by such employee or person selected to be such employee. The phrase "anything of value" as used herein means any item of value, including but not limited to invitations or tickets to sporting events, social gatherings, outings or parties, or the provision of meals, or lodging, or the use of vehicles of any kind, and any other item or thing of monetary value. In the event that the Contractor breaches this provision, the Department may take action against the Contractor including but not limited to the following: (a) ordering the Contractor to cease the work or any part thereof, (b) termination of the contract, (c) requiring Contractor's sureties to complete the work, and (d) suspend or terminate the Contractor's prequalification status.

Executive Order 130 (Anti Boycott Covenant)

The Contractor warrants, represents and agrees that during the time this contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151 E, Massachusetts General Laws. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have the Commonwealth shall be entitled to rescind this contract.

As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order No. 195

In compliance with Executive Order No. 195 of the Governor of the Commonwealth, the Governor or his/her

designee, the Secretary of Administration and Finance, and the State Auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the contractor which pertain to the performance of the provisions and requirements of this contract.

Dump Truck Rates.

(1) With regard to truck carriers, including but not limited to dump trucks, the Contractor shall comply with the provisions of Massachusetts General Laws, Chapter 30, Sections 39 (A) - (E).

(2) The Contractor shall utilize only Department of Public Utilities dump truck rates and carriers licensed under the provisions of Massachusetts General Laws, Chapter 159, Section (B) for dump truck operations.

(3) In accordance with the provisions of Massachusetts General Laws, Chapter 30, Section 39 (B), the dump truck rates and transportation charges shall be the rate on file under provisions of Massachusetts General Laws, Chapter 159 (B) at the Department of Public Utilities. The Contractor shall pay the transportation charges within fifteen (15) calendar days of receipt of an invoice from the dump truck carrier.

(4) The Contractor's attention is directed to Massachusetts General Laws, Chapter 30, Section 39 (A), and Chapter 149, Section 29 regarding security for payment of transportation charges.

B. Air Pollution Control.

The Contractor shall comply with the provisions of Chapter 111, as amended, of the General Laws of the Commonwealth, pertaining to and establishing the Air Pollution Control Districts in the Commonwealth. The burning of trees, brush, etc. will not be permitted. The Contractor shall provide other satisfactory, approved methods of disposal without additional compensation.

C. Prevention of Water Pollution (See Subsection 7.02).

Attention of the Contractor is directed to Section 42 of the Massachusetts Clean Waters Act (Chapter 21 of the General Laws as amended).

D. Plant Pest Control.

The Contractor's attention is directed to the provisions of The Federal Plant Quarantine Act of 1912, as amended (7 U.S.C. 151-165 and 167); The Terminal Inspection Act of March 4, 1915, as amended (7 U.S.C. 166); Organic Act of 1944, as amended (7 U.S.C. 150aa-150jj); Cooperation with States in Administration and Enforcement of Certain Federal Laws, approved September 28, 1962 (7 U.S.C. 450).

All soil moving equipment operating in regulated areas in Massachusetts will be subject to plant quarantine regulations. In general, these regulations require the thorough cleaning of soil from equipment by the Contractor before such equipment is moved from regulated areas within Massachusetts to uninfested areas either within or without the Commonwealth. The cost of such cleaning shall be included in the contract prices and shall not be in addition thereto.

Complete information may be obtained from the Massachusetts Department of Agriculture, Plant Pest Control Division, 100 Cambridge Street, Boston, Massachusetts 02202. For interstate movement of soil moving equipment, the following should be contacted:

U.S. Department of Agriculture,
Plant Pest Control Division
424 Trapelo Road
Waltham, Massachusetts 02154

7.02 Prevention of Water Pollution – Sanitary Provisions.

A. General.

The Contractor shall exercise every reasonable precaution to prevent or minimize the silting of rivers, streams or water impoundments during actual construction and periods when the work may be temporarily suspended. Similar precautionary measures shall be taken with respect to temporary roads and access roads to borrow pits. This work shall also consist of temporary control measures ordered by the Engineer during the life of the Contract to control water pollution, through use of berms, dikes, dams, sediment basins, crushed stone, gravel, mulches, grasses, waterways, and other erosion control devices or methods.

The temporary pollution control provisions contained herein shall be coordinated with the permanent erosion control features specified elsewhere in the Contract to the extent practical to assure economical, effective and continuous erosion control throughout the construction and post-construction period.

B. Schedule of Work.

At the preconstruction conference, the Contractor shall submit for acceptance and approval his/her procedure

for the accomplishment of temporary erosion control work, and his/her schedule for the accomplishment of permanent erosion control work for all applicable phases of construction.

Since circumstances may require that certain pollution control work be done as promptly as possible, the Contractor's procedure must indicate his/her ability with men, equipment and material to take the necessary action.

C. Borrow Pits, Haul Roads and Disposal Areas.

Prior to entering or constructing haul roads or opening any borrow pit or waste disposal area, the Contractor shall submit his/her work plan for erosion control of such roads, pits or disposal areas. No work shall be started until the erosion control program and methods of operation have been accepted and are approved by the Engineer.

Wherever practicable so to do, unless objection thereto is made by the borrow pit owner, the Contractor shall save sufficient good topsoil from the excavated area and use it in establishing a vegetative cover which will blend the pit area into the surrounding landscape when the work on the project is completed. Vegetative cover will be similarly established in areas where waste material is placed. (See also Subsection 150.21 Borrow Pit Restrictions).

D. Construction Requirements.

The Engineer has the authority to limit the surface area of erodible earth material exposed by clearing and grubbing or excavation, borrow and fill operations and to direct the Contractor to provide immediate permanent or temporary pollution control measures to prevent contamination of adjacent streams or other watercourses, lakes, ponds or areas of water impoundment. Such work may involve the construction of temporary berms, dikes, dams, sediment basins, waterways, and use of temporary mulches, seeding or other control devices or methods as necessary to control erosion. All slopes shall be seeded and mulched as the earthwork proceeds to the extent considered desirable as practicable.

Where erosion is likely to be a problem, clearing and grubbing operations should be so scheduled and performed that grading operations and permanent erosion control features can follow immediately thereafter if the project conditions permit; otherwise temporary erosion control measures will be required between successive construction stages.

The Engineer will limit the area of excavation, borrow and embankment operations in progress commensurate with the Contractor's capability in keeping the finish grading, mulching, seeding and other such permanent pollution control measures current in accordance with the accepted schedule. Should seasonal limitations make such coordination unrealistic, temporary erosion control measures shall be taken immediately to the extent feasible and justified.

If, in the judgment of the Engineer, the surface area of erodible earth material exposed has the potential for causing water pollution, the Engineer shall direct the Contractor to cease the applicable operations until satisfactory temporary or permanent erosion control measures are taken. In the event of conflict between these requirements and pollution control laws, rules or regulations of other Federal or State or local agencies, the more restrictive laws, rules or regulations shall apply.

The Contractor will be required to incorporate all permanent erosion control features into the project at the earliest practicable time, as outlined in his/her accepted schedule. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during the design stage; that are needed prior to installation of permanent pollution control features; or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.

The Contractor shall take reasonable precaution to prevent grass and brush fires within the work site thereby eliminating further sources of erosion due to burned over areas.

E. Work in or Near Streams, Rivers and Impoundments.

The fording of streams with equipment shall be kept to a minimum. Where frequent stream crossings are contemplated and where fording might create sediment detrimental to fish, wildlife, water supplies or irrigation systems, temporary bridges or culverts shall be installed, the cost of which shall be absorbed by the Contractor.

Unless otherwise approved in writing by the Engineer, construction operations in rivers, streams, and impoundments shall be restricted to those areas where channel changes are shown on the plans and to those areas which must be entered for the construction of temporary or permanent structures. Rivers, streams and impoundments shall be promptly cleared of all falsework, piling, debris, or other obstructions placed therein or caused by the construction operations.

Excavation from the roadway, channel changes, cofferdams, etc., shall not be deposited in or so near to rivers, streams, or impoundments that it will be washed away by high water or runoff.

When the Contractor uses water from natural sources for any of his/her operations, intake methods shall be

such as to avoid contaminating the source of supply and maintain adequate downstream flow when the source is a stream.

Pollutants such as chemicals, fuels, lubricants, bitumens, raw sewage and other harmful waste shall not be discharged into or alongside of rivers, streams, impoundments or into natural or man-made channels leading thereto.

F. Sanitary Provisions.

The Contractor shall provide and maintain in a neat sanitary condition such accommodations for use of his/her employees as may be necessary to comply with the requirements of the Department of Public Health, local health officials or other authorities having jurisdiction.

7.03 Permits and Licenses.

The Contractor shall procure all required permits and licenses, pay all charges, fees and taxes and shall give all notices necessary and incidental to the due and lawful prosecution of the work. The cost thereof shall be included in the prices bid for the various items listed in the Proposal. Copies of all required permits and licenses shall be filed with the Engineer prior to the beginning of work.

The Contractor's attention is directed to the provisions of General Laws, Chapter 90, Section 9 as amended, in which it is provided that earth-moving motor vehicles which exceed certain dimensions or mass limits as specified in said Act, and which are used exclusively for building, repair and maintenance of highways, may be operated without registration for a distance not exceeding 270 meters on any way adjacent to any highway or toll road being constructed, relocated or improved provided a permit, authorizing such use, to be issued by the Commissioner of Public Works or by the Board or officer having charge of such way, has been procured by the Contractor.

7.04 Motor Vehicles.

All motor vehicles (except vehicles used solely for transporting employee(s) to and from the project) used wholly or in part within the Commonwealth by the Contractor or any Subcontractor, or by any person directly or indirectly employed by them in the execution of the Contract, shall be registered in the Commonwealth of Massachusetts and bear Massachusetts registration plates except as stipulated in Subsection 7.03.

Motor vehicles used solely for transporting employee(s) to and from the project shall be registered as required under General Laws, Chapter 90, Section 3, as amended.

No vehicle shall be driven on any way, as defined in Section 1 of Chapter 90 of the General Laws, unless such vehicle is constructed or loaded so as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction or water or other substance may be sprinkled on such a way in cleaning or maintaining the same (General Laws, Chapter 85, Section 30, as amended).

7.05 Insurance Requirements.

A. Workmen's Compensation Insurance.

The Contractor, before commencing performance of the work required to be done under the Contract, shall provide for the payment of the compensation provided by Massachusetts General Laws, Chapter 152, as amended, to all persons to be employed by him/her in connection with the said performance, and the Contractor shall continue in full force and effect throughout the period required for the completion of the improvement such insurance as may be required under said chapter. The persons for whom compensation is to be provided by such insurance shall include those reserve or special police officers employed by the Contractor for the purpose of directing or maintaining traffic or other similar purposes within the site of the improvement and paid directly by him/her for such services; they shall not include, however, any regular police officers employed for said purpose.

Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the Contract and shall operate as an immediate termination thereof.

Such insurance shall not be canceled or otherwise terminated until ten (10) days after written notice of cancellation or termination is given by the party proposing cancellation to the other party or until notice has been received that the employer has secured insurance from another insurance company or has otherwise insured the payment

of compensation provided for by Massachusetts General Laws, Chapter 152, as amended. Notice of cancellation sent to the party proposing cancellation by registered mail, postage prepaid, with a return receipt of the addressee requested, shall be sufficient notice. An affidavit of any officer, agent or employee of the insurer or of the insured, as the case may be, duly authorized for the purpose, that he/she has so sent such notice addressed as aforesaid, shall be prima facie evidence of sending thereof as aforesaid. This section shall apply to the legal representatives, trustee in bankruptcy, receiver, assignee, trustee and the successor in interest of any such Contractor.

The aforesaid insurance except that required for traffic officers, shall be taken out and maintained with no compensation therefor other than that provided by the contract unit prices.

B. Public Liability Insurance.

The Contractor shall take out and maintain insurance of the following kinds and amounts in addition to any other kinds or bonds required under other provisions of the Contract, with no compensation therefor other than that provided by the contract unit prices.

1. Contractor's Public Liability and Property Damage Liability Insurance.

The Contractor shall furnish evidence to the Department that, with respect to the operations the Contractor performs, the Contractor carries regular Contractors' Public Liability Insurance providing for a limit of not less than \$500,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of \$1,000,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of bodily injuries to or death of two or more persons in any one accident and regular Contractor's Property Damage Liability Insurance providing for a limit of not less than \$500,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total or aggregate limit of \$1,000,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of injury to or destruction of property during the policy period.

2. Contractor's Protective Public Liability and Property Damage Liability Insurance.

The Contractor shall furnish evidence to the Department that, with respect to the operations performed for him/her by Subcontractors, the Contractor carries in his/her own behalf regular Contractor's Protective Public Liability Insurance providing for a limit of not less than \$500,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of \$1,000,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and regular Contractor's Protective Property Damage Liability Insurance providing for a limit of not less than \$500,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of injury to or destruction of property in any one accident and, subject to that limit per accident a total (or aggregate) limit of \$1,000,000 unless higher or lower limits are stipulated in the Special Provisions for all damages arising out of injury or destruction of property during the policy period.

3. Railroads' Protective Liability and Property Damage Liability Insurance.

In addition to the above, the Contractor shall furnish evidence to the Department that, with respect to the operation the Contractor or any of his/her Subcontractors perform, the Contractor has provided for and in behalf of the Railroad Company affected by this Contract Regular Protective Liability Insurance providing for a limit of not less than the amount named in the Special Provisions for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of the amount named in the Special Provisions for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and Regular Protective Property Damage Liability Insurance for a limit of not less than the amount named in the Special Provisions for all damages arising out of injury to or destruction of property in any one accident and, subject to that limit per accident, a total (or aggregate) limit of the amount named in the Special Provisions for all damages arising out of injury to or destruction of property during the policy period.

C. General.

1. The insurance requirements hereinbefore stipulated shall cover all damages to property whether above or below the ground, shall apply to the entire project, except that such insurance as may be required for the protection of a railroad shall apply only to that portion of the project which is in the immediate vicinity of the railroad property.

2. All insurance policies shall contain suitable stipulations providing for blasting operations if and when required.

3. If any part of the work is sublet, similar insurance to that required of the Contractor shall be provided by or

in behalf of the Subcontractors to cover their operations, in accordance with the hereinbefore provisions of “A. Compensation Insurance,” and “B.1, Contractor’s Public Liability and Property Damage Liability Insurance,” with the same minimum limits as required of the Contractor, or such lower minimum limits as the Engineer may approve.

4. All insurance required of the Contractor shall be carried until all work required to be performed under the terms of the Contract or Subcontracts has been satisfactorily completed. In the case of the Contractor, this shall be evidenced by the written acceptance of the physical work by the Chief Engineer.

5. Before the commencement of the performance of the Contract or of any Subcontract the Contractor shall furnish the Department two complete copies of the policies the Contractor has provided for and in behalf of the Railroad and the Contractor shall file with the Department suitable insurer’s certifications showing, for each policy of all required insurance, the following: the name and address of the insurer and of the insured, the policy period, the details of coverage including limits of liability, the rates and cost of such insurance, and a statement that each policy is endorsed to provide that the insurance company shall notify all insured parties and the Department by registered mail at least 30 days in advance of termination or any change in the policy.

7.06 Patented Devices, Materials and Processes.

Whenever the Contractor desires to use any design, device, material, or process covered by letters patent or copyright, the right for such use shall be secured by suitable legal agreement with the patentee or owner, and a copy of this agreement shall be filed with the Party of the First Part.

This article shall not be construed as imposing any obligation on the Party of the First Part to see that such agreements are secured or filed or complied with. The Contractor shall be solely responsible for the use of any such design, device, material or process.

7.07 Restoration of Surfaces Opened by Permit.

The Contractor shall not allow any party to make an opening in the highway for any purpose except upon the direction of the Engineer and the presentation of a duly authorized permit. The holder of such a permit shall be considered in the same class as a Contractor on an adjacent project, and the provisions of Subsections 5.05 and 5.06 shall apply.

7.08 Federal Participation (Applicable only to Contracts where the cost of any portion thereof is paid out of Federal Funds).

Attention is directed to the provisions of the Federal Highway Act of November 9, 1921 (42 U.S. Statutes at large, page 212) as modified and as extended, and 72 U.S. Statutes at large 885, U.S. Code Title 23, and any other provisions of law, or amendments thereto whereby such Federal Participation is authorized, and any regulations properly and lawfully promulgated thereunder, under which the United States shall aid the individual states in the construction of highways. When the United States Government is to pay any portion of the cost of the project the above act of Congress provides that the construction work and labor in each State shall be done in accordance with the laws of that state and applicable Federal Laws. The work embraced in this Contract will therefore be subject to such inspection by the Federal Highway Administration as may be necessary to meet the above requirements. Such inspection shall however, in no sense make the United States Government a party to this Contract, and will in no way interfere with the rights of either party hereunder.

7.09 Public Safety and Convenience.

The Contractor shall at all times, until written acceptance of the physical work by the Chief Engineer, be responsible for the protection of the work and shall take all precautions for preventing injuries to persons or damage to property on or about the project. If the Contractor constructs temporary bridges or provides temporary crossings of streams, his/her responsibility for accidents shall include the roadway and sidewalk approaches as well as the structures of such crossings.

Where the Contract involves dredging, excavation or other construction work in navigable waters, the work shall be so conducted as to cause no unnecessary obstruction to the free passage of vessels.

The decision for routing traffic through or around the work and provisions for the control of same will be made

by the Engineer. Whenever it is deemed advisable, special detours will be provided for truck or bus traffic. On major projects and projects in urban areas traffic patterns and schedules will be studied in the design stage and included in the Special Provisions.

Subject to the approval of the Engineer, the Contractor shall schedule the temporary or permanent closing of highways to travel only after consultation with the Police Chief and Fire Chief of the municipality or municipalities concerned. The temporary closing of highways shall be kept to a minimum.

When a road or portion thereof is under construction and is closed to through traffic and when detours around the work are provided on existing city or town ways, the Contractor shall maintain such city or town ways as required in Subsection 4.07 and be compensated as specified in Subsection 4.07.

Where the new construction coincides with the present traveled way, the Contractor shall carry on his/her work in a manner acceptable to the Engineer so that a reasonably safe uninterrupted traffic flow is maintained through the project during the entire construction period over traffic lane patterns approved by the Engineer; and the Contractor shall provide and maintain in a reasonably safe condition the temporary approaches and the crossings of intersecting highways. When grading operations are in progress, each level of excavation or fill shall be graded as near as practicable to an even surface so as to provide a satisfactory passageway for the use of traffic.

The Contractor shall maintain all temporary roadways in a manner which will provide reasonably safe and convenient travel. When temporary roadways outside the project limits are abandoned, the surfaces shall be removed and all fill graded to a smooth, neat, natural appearance, free from water pockets and as directed by the Engineer.

Abandoned temporary or existing roads beyond the limits of the main roadway slopes, but within the project limits, shall be excavated, graded, loamed and seeded as directed to present a neat, natural appearance and provide for proper drainage. Compensation for this work will be included under the respective items of work involved.

Snow removal on detours or present traveled ways will not be required of the Contractor.

The Contractor, as directed, shall at all times so conduct the work that the abutters shall have reasonable access to their property. When public or private property is isolated by the closure of a road, the Contractor shall be responsible for providing such reasonably safe means of access to a public way as the Engineer deems essential and the Contractor shall be compensated for all such work directed by the Engineer at the contract unit prices for the type of work and materials involved. When it is necessary to leave materials and equipment upon the highway they shall be placed so as to cause the least possible obstruction to drainage, pedestrians and other travel.

When the work in any way affects the operation, management, maintenance, business or traffic on any railroad, such work shall be carried on in a manner satisfactory to the said railroad; but all orders, directions or instructions to the Contractor relative to work under the Contract will be issued only by the Engineer of the Department. The Contractor shall use all possible vigilance in order effectively to guard against all accidents or damages on the railroad due to his/her work, and the Contractor shall at all times during the progress of the work so manage and execute the same as to cause the least possible interference with the operation, management, business or traffic of the railroad.

Trenches shall not be opened in traveled ways until all materials and equipment required for the work are at the site and available for immediate use. When work is not in progress trenches in areas subject to public travel shall be covered with steel plates capable of safely sustaining an MS18 truckload with impact. The work at each trench shall be practically continuous, with the placing of conduit and piping, backfilling and patching of the surface closely following each preceding operation.

At the end of each working day where trenches in areas of public travel are covered with steel plates, each edge of such plates shall either be bevelled or protected by a slope of 25 millimeters vertically to 600 millimeters horizontally. Any temporary patching material may be used to construct the ramps. The cost of necessary patching materials, and their maintenance and removal, will be considered incidental to the item involved with no separate payment.

Pending installation of castings, all structures in travel ways or deemed hazardous by the Engineer shall be protected with suitable covers (steel plates or equal) capable of withstanding an MS18 truckload with impact. The cost of necessary covers or plates will be considered incidental to the item involved with no separate payment.

7.10 Barricades and Warning Signs.

The Department may furnish, erect and maintain regulatory, warning and guide signs, traffic control signals, markings, safety lighting and any other traffic devices as it deems necessary for the safe flow of traffic during construction.

Highways wholly or partly closed to traffic shall be protected by suitable barricades, barrier fences, traffic signs

and other traffic devices, furnished and erected by the Contractor at locations shown on the plans, or as directed, and the Contractor shall be compensated therefor in accordance with the contract unit prices for the items of work involved.

The Contractor shall at his/her own expense provide and erect, acceptable or as directed, barricades, barrier fences, traffic signs, and all other traffic devices, not covered in his/her Contract as payment item, to protect the work from traffic, pedestrians, or animals. The Contractor shall at his/her own expense provide sufficient temporary lighting such as flares, lanterns, or other approved illuminated traffic signs and devices, not covered in his/her Contract as a payment item, to afford adequate protection to the traveling public. The Contractor shall also at his/her own expense furnish a sufficient number of watchmen at all times to protect the work.

All barricades, barrier fences, traffic signs and other traffic devices must conform with the Department's manual on Uniform Traffic Control Devices.

The Contractor shall be held responsible for all damage to the work due to any failure of barricades, barriers, warning signs or lights to properly protect the work from traffic, pedestrians or other causes.

7.11 Traffic Officers and Railroad Flagging Service.

The Contractor shall provide such police officers as the Engineer deems necessary for the direction and control of traffic within the site of the improvement. Such officers shall wear regulation policemen's uniforms. They may be reserve or special officers subject to the control of and paid directly by the Contractor; or regular officers not subject to the control of the Contractor. Compensation for the services of said regular police officers may be paid by the Contractor to their employers, or paid directly by the Contractor to such regular police officers, or paid by the Contractor to a designated municipal official, at a patrolman's rate of pay, subject to all rules and regulations, ordinances or by-laws in effect in the city or town in which the work is to be performed.

The Party of the First Part will reimburse the Contractor for payments made for the services of all required traffic officers, together with such payments as the Contractor will have made for reserve or special officers under the Massachusetts Workmen's Compensation Act (General Laws, Chapter 152, Section 1, as amended), Liability Insurance, and for payments as the Contractor is required in writing by proper authority to make under the Massachusetts Employment Security Act (General Laws, Chapter 151A) and the Federal Social Security Act (United States Code, Title 26 and 42). The Contractor is required to submit to the Engineer copies of this written requirement for the Massachusetts Employment Security Act and the Federal Social Security Act.

The rates of wages paid by the Contractor to such police officers shall be the same as those paid to police officers working on special details. When the Contractor is required to submit weekly certified copies of payroll, separate certified copies of payroll covering only such reserve and special police officers shall be submitted containing complete payroll information.

If any of the work required to be done by the Contractor may obstruct the tracks of a railroad or in any way endanger the operation of its trains, and the services of a flagman or flagmen or other railroad employees are required by the Chief Engineer of the railroad company and men are assigned by him/her for the protection of the property and traffic of the Railroad against hazards capable of being caused by the Contractor, the cost of all such flagging services shall be borne by the Contractor and no compensation therefor shall be made other than that provided by the contract unit prices.

The Department will reimburse the Contractor for the above costs required by the Railroad when the preliminary estimate of bid items for a project is \$250,000 or less.

7.12 Use of Explosives.

When the use of explosives is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life and property including new work and whenever directed, the number and size of the charges shall be reduced. The Contractor shall be responsible for all damage resulting from the use of explosives. All explosives shall be stored in a secure manner in conformance with all the State laws and regulations, as well as any local requirements; and all such storage places shall be marked – "Dangerous – Explosives".

The Contractor shall be required to conform to the regulations of the Massachusetts Department of Public Safety concerning storage, handling and use of explosives.

Prior to start of the blasting, the Contractor shall give at least a 24-hour notice and a schedule of his/her operations thereof to the operating official, company, or companies, leasing, owning or responsible for pipes, conduits,

poles, wires, railroad tracks, or any other public or private utility which may be endangered by the blasting in order that a representative of said owner or lessee may be present at the site. The Contractor shall take proper precaution to prevent injury to said properties during all blasting operations.

7.13 Protection and Restoration of Property.

The Contractor shall, at his/her own expense, preserve and protect from injury all property either public or private along and adjacent to the proposed work, and the Contractor shall be responsible for and repair at his/her own expense any and all damage and injury thereto, arising out of or in consequence of any act of omission, neglect or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor or his/her employees or Subcontractors in the performance of the work covered by the Contract prior to completion and acceptance thereof. The Contractor shall exercise special care during his/her operations to avoid injury to underground structures such as water or gas mains, pipes, conduits, manholes, catch basins, etc.

Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of public or private utilities of his/her intention to commence operations affecting such utilities at least 48 hours (exclusive of Saturdays, Sundays and legal holidays) in advance of the start of such operations in accordance with Chapter 82, Section 40 of the General Laws, as amended, and the Contractor shall at the same time file a copy of said notice with the Engineer.

When necessary, the Contractor shall cooperate with representatives of public service companies in order to avoid damage to their structures by furnishing and erecting suitable supports, props, shoring or other means of protection. Fire hydrants adjacent to the work at all times shall be readily accessible to fire apparatus and no material or other obstructions shall be placed within a radius of 3 meters of a fire hydrant.

Although the plans may indicate the approximate location of existing subsurface utilities in the vicinity of the work, the accuracy and completeness of the information is not guaranteed by the Department. Before commencing any work or operations which may endanger or damage any subsurface structures, the Contractor shall carefully locate all such structures and conduct his/her operations in such manner as to avoid damage thereto. The Contractor shall not interrupt live services until new services have been provided. All abandoned services shall be plugged or otherwise made secure.

The Contractor shall receive no extra compensation for such work unless said compensation is authorized in writing by the Engineer, as specified under Subsection 4.03 for Extra Work (except test pits as directed to be made in order to locate existing underground structures).

If the Contractor wishes to have any utilities temporarily relocated for his/her convenience other than contemplated by the Department, the Contractor shall make the necessary arrangement with the owners and make reimbursement for the cost thereof at his/her own expense.

Land monuments and property marks shall be carefully protected and if necessary to remove the same, the Contractor shall do so only at the Engineer's direction and after an authorized agent has witnessed or otherwise referenced their location. The Contractor shall not injure or remove trees or shrubs without proper authority. Insofar as possible the Contractor shall confine his/her movements and operations to the area within the limits of the location and the area outside the scope of the work shall not be disturbed except as directed.

The Contractor's attention is directed to Chapter 231 of the Acts of 1977 which stipulates that, surveyors of highways, road commissioners, or any other person, agency or authority responsible for road or highway repairs shall notify the Massachusetts Bay Transportation Authority not later than forty-eight hours prior to the repair, construction or reconstruction of any road or highway used by said Authority in the operation of regular route service if such repairs, construction or reconstruction shall prohibit the operation of regular route service by the Authority over such road or highway.

The bidder's attention is directed to the code of Federal Regulations Part 1926 - Safety and Health Regulations for Construction, Subpart N 1926.550, relating to construction equipment clearances at overhead electric lines, which states in part " . . . The minimum clearance between the lines and any part of the crane or load must be at least 3.05 meters from lines rated 50 KV or below, and greater distances for higher voltages, . . . ". For the protection of personnel and equipment, the Contractor should be aware of this regulation especially during paving operations using large semi-trailer vehicles.

7.14 Responsibility for Damage Claims.

The Contractor shall indemnify, defend and save harmless the Commonwealth, the Department, the municipality and all of its or their offices, agents and employees against all suits, claims or liability of every name and nature, for or on account of any injuries to persons or damage to property arising out of or in consequence of the acts of the Contractor in the performance of the work covered by the Contract or failure to comply with the terms and conditions of said Contract, whether by the Contractor or his/her employees or Subcontractors, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by the Contract.

The Contractor will be held responsible for any and all claims for damage to underground structures such as, but not restricted to, water or gas mains, pipes, conduits, manholes or catch basins, due to his/her operation or to the operations of any of his/her Subcontractors.

The Contractor's attention is directed to the provisions of General Laws, Chapter 30, Section 39H as amended. In accordance therewith, the Commonwealth agrees to indemnify the Contractor against loss by reason of the liability to pay damages to others for entry upon any land included within the boundaries of the area within which the work is to be performed as set forth in the construction Contract and the plans and specifications applying to such Contract or any approved changes thereof or for damage sustained upon any lands adjoining said land by reason of the flowage or drainage of water thereto or therefrom. In any case wherein such damages result from the failure of the Commonwealth to take an interest or easement in such adjoining area, provided that the Commonwealth acting by an authorized representative thereof has issued a notice in writing to the Contractor prior to the making of an entry upon such premises directing or permitting him/her to proceed with his/her Contract and to make such entry upon the premises for the purpose of performing the work required by said Contract, or any approved alteration thereof, and provided, further, that the Contractor has given notice in writing to the contracting authority within 15 days after receiving notice of any claim to come in and settle the same and upon the commencement of any action against him/her to come in and defend said action, but in no event shall any such damage claim be compromised or adjusted without the written consent of the Commonwealth. The provisions of this section shall in no way relieve the Contractor from any liability for damage to property of others caused by his/her negligence or that of his/her employees nor shall they be construed to require the Commonwealth to indemnify the Contractor against any loss resulting from such acts of negligence.

7.15 Claims Against Contractors for Payment of Labor, Materials and Other Purposes.

The Contractor shall pay all bills for labor, materials, rental of equipment and for such other purposes as are more specifically set forth in Chapter 149, Section 29 and Chapter 30, Section 39A, General Laws, and all amendments thereto. It is understood that the Payment Bond required by Subsection 3.04, Paragraph B, is the sole security for petitions brought pursuant to said sections. The Contractor and Party of the First Part shall also comply with the provisions of Chapter 30, Section 39F and G.

Chapter 149, Section 29, of the General Laws as amended reads as follows: Officers or agents contracting in behalf of the Commonwealth or in behalf of any county, city, town, district or other political subdivision of the Commonwealth or other public instrumentality for the construction, reconstruction, alteration, remodeling, repair or demolition of public buildings or other public works when the amount of the Contract in the case of the Commonwealth is more than five thousand dollars, and in any other case is more than two thousand dollars, shall obtain security by bond in an amount not less than one half of the total contract price, for payment by the Contractor and Subcontractors for labor performed or furnished and materials used or employed therein, including lumber so employed which is not incorporated therein and is not wholly or necessarily consumed or made so worthless as to lose its identity, but only to the extent of its purchase price less its fair salvage value, and including also any material specially fabricated at the order of the Contractor or Subcontractor for use as a component part of said public building or other public work so as to be unsuitable for use elsewhere, even though such material has not been delivered and incorporated into the public building or public work, but only to the extent of its purchase price less its fair salvage value and only to the extent that such specially fabricated material is in conformity with the Contract, plans and specifications or any changes therein duly made; for payment of transportation charges for materials used or employed therein which are consigned to the Contractor or to a Subcontractor who has a direct contractual relationship with the Contractor; for payment by such Contractor and Subcontractors of any sums due for the rental or hire of vehicles, steam shovels, rollers propelled by steam or other power, concrete mixers, tools and other appliances and equipment employed in such construction, reconstruction, alteration, remodeling, repair or demolition; for payment of transportation charges directly related to

such rental or hire; and for payment by such Contractor and Subcontractors of any sums due trustees or other persons authorized to collect such payments from the Contractor or Subcontractors, based upon the labor performed or furnished as aforesaid, for health and welfare plans, supplementary unemployment benefit plans and other fringe benefits which are payable in cash and provided for in collective bargaining agreements between organized labor and the Contractor or Subcontractors; provided, that any such trustees or other persons authorized to collect such payments for health and welfare plans, supplementary unemployment benefit plans and other fringe benefits shall, subject to the following provisions, be entitled to the benefit of the security only in an amount based upon labor performed or furnished as aforesaid for a maximum of two hundred and forty consecutive calendar days.

In order to obtain the benefit of such bond for any amount claimed, due and unpaid at any time, any claimant having a contractual relationship with the Contractor principal furnishing the bond, who has not been paid in full or any amount claimed due for the labor, materials, equipment, appliances or transportation included in the paragraph (1) coverage within sixty-five days after the due date for same, shall have the right to enforce any such claim (a) by filing a petition in equity within one year after the day on which such claimant last performed the labor or furnished the labor, materials, equipment, appliances or transportation included in the claim and (b) by prosecuting the claim thereafter by trial in the superior court to final adjudication and execution for the sums justly due the claimant as provided in this section.

Any claimant having a contractual relationship with a Subcontractor performing labor or both performing labor and furnishing materials pursuant to a Contract with the general Contractor but no contractual relationship with the Contractor principal furnishing the bond shall have the right to enforce any such claim as provided in subparagraphs (a) and (b) of paragraph (2) only if such claimant gives written notice to the Contractor principal within sixty-five days after the day on which the claimant last performed the labor or furnished the labor, materials, equipment, appliances or transportation included in the paragraphs (1) coverage, stating with substantial accuracy the amount claimed, the name of the party for whom such labor was performed or such labor, materials, equipment, appliances or transportation were furnished; provided, that any such claimant shall have the right to enforce any part of a claim covering special fabricated material included in the paragraph (1) coverage only if such claimant has given the Contractor principal written notice of the placement of the order and the amount thereof not later than twenty days after receiving the final approval in writing for the use of the material. The notices provided for in this paragraph (3) shall be served by mailing the same by registered or certified mail postage prepaid in an envelope addressed to the Contractor principal at any place at which the Contractor principal maintains an office or conducts his/her business, or at the Contractor principal's residence, or in any manner in which civil process may be served.

Upon motion of any party, the court shall advance for speedy trial a petition to enforce a claim pursuant to this section. Sections 59 and 59B of Chapter 231 shall apply to petitions to enforce claims pursuant to this section. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to said Sections 59 or 59B and shall, upon motion of any party, advance for speedy trial the petition to enforce the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any claimant under this section with the petition of one or more other claimants on the same bond, unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general Contract) is applicable to the petitions sought to be consolidated, and that such consolidation will prevent unnecessary duplication of evidence.

The court shall not dismiss any petition on the ground that it was filed before the sixty-fifth day after the day the claimant last performed the labor or furnished the labor, materials, equipment, appliances or transportation included in the claim, nor shall the court dismiss any petition on the ground that a claim involves more than one Contract with the same party and that the one year period has elapsed as to any one Contract; provided, that the court shall not enter a decree upon any claim or part thereof prior to the seventieth day after the day the claimant last performed the labor or furnished the labor, materials, equipment, appliances or transportation included in the claim.

A decree in favor of any claimant under this section shall include reasonable legal fees based upon the time spent and the results accomplished as approved by the court and such legal fees shall not in any event be less than the published rate of any recommended fee schedule of a state-wide bar association or of a bar association in which the office of counsel for claimant is located, whichever is higher.

Any person employing persons or any public works hereinbefore referred to shall post conspicuously, at such place or places as will provide reasonable opportunity for all employees to read the same, a correct copy of this section. The Department shall enforce this paragraph. (Refers to the Department of Labor and Industries.)

In conformity with the requirements of Chapter 30, Section 39F of the General Laws, as amended, the following is quoted from Chapter 30, Section 39F.

“(1) Every contract awarded pursuant to sections forty-four A to L, inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (i) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor.

“(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

“(b) Not later than the sixty-fifth day after each subcontractor substantially completes his/her work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

“(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for that account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.

“(d) If, within seventy days after the subcontractor has substantially completed the work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

“(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory item of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

“(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor

and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

“(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

“(h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

“(i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraphs (e), (f), (g), and (h).”

Chapter 30, Section 39G, of the General Laws, as amended reads as follows:

Upon substantial completion of the work required by a contract with the Commonwealth, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty-one pay period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.

Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one percent retainage on that work, including the quantity, price and all but 10% retainage for the undisputed part of each work item and extra work item in dispute but excluding the disputed part thereof, less the estimate cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty-nine F, but no contract subject to said section thirty-nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by subcontractors, material suppliers or others.

If the awarding authority fails to prepare and send to the contractor any substantial completion estimate required by this section on or before the date hereinabove set forth, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.

Within fifteen days after the effective date of the declaration of substantial completion, the awarding authority shall send to the contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his/her control, the contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the contractor by certified mail, return receipt requested, terminate the contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the contractor.

Within thirty days after receipt by the awarding authority of a notice from the contractor stating that all of the work required by the contract has been completed, the awarding authority shall prepare and forthwith send to the contractor for acceptance a final estimate for the quantity and price of the work done and all retainage on that work less all payments made to date, unless the awarding authority's inspection shows that work items required by the contract remain incomplete or unsatisfactory, or that documentation required by the contract has not been completed. If the awarding authority fails to prepare and send to the contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the contractor for acceptance or the date of payment therefor, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.

The awarding authority shall pay the amount due pursuant to any periodic, substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the contractor, a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five percent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five percent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.

Substantial completion, for the purposes of this section, shall mean either that the work required by the contract has been completed except for work having a contract price of less than one percent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.

7.16 Claims of Contractor for Compensation.

No person or corporation, other than the signer of the Contract as Contractor, now has any interest hereunder, and no claim shall be made or be valid; and neither Party of the First Part nor any member, agent or employee thereof, shall be liable for, or be held to pay, any money except as provided in Subsections 4.02, 4.03, 4.04, 4.06 and 9.02 of these Specifications and Clause 3 of the Contract.

All claims of the Contractor for compensation other than as provided for in the Contract on account of any act of omission or commission by the Party of the First Part or its agents must be made in writing to the Engineer within one week after the beginning of any work or the sustaining of any damage on account of such act, such written statement to contain a description of the nature of the work performed or damage sustained; and the Contractor shall, on or before the 15th day of the month succeeding that in which such work is performed or damage sustained, file with the Engineer an itemized statement of the details and amount of such work or damage and unless such statement shall be made as required, his/her claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment on account of any such work or damage. Such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed as providing the validity of the claim. The provisions of this paragraph shall

not apply to changes in quantities as provided under Subsection 4.06 or to Extra Work ordered by the Engineer in writing.

On the basis of information provided in writing by his/her own employees, servants, or agents the Contractor will be required to certify, in writing, that the work for which the Contractor is claiming payment, other than as provided for in the Contract, is work actually performed, and the costs as shown are the amounts legally due for performing such work for which payment is claimed.

The Engineer shall determine all questions as to the amount and value of such work, and the fact and extent of such damage and shall so notify the Contractor in writing of his/her determination. Such determination of the Engineer may be appealed to the Board of Contract Appeals in accordance with General Law, Chapter 16, Section 5b, as amended.

The appeal shall set forth the contract number, city or town project is in, the name and address of the Contractor, the amount of the claim (and breakdown of how amount was computed), a clear, concise statement of the specific determination from which appeal is taken, including the reasons for appealing the determination and shall be signed by the Contractor.

The Commission Secretary shall record the date and time any such appeal is received, and shall keep the appeal on record. The Commission Secretary shall forward a copy of the appeal to the Hearing Examiner who shall set the matter down for hearing in accordance with rules adopted by the Commission.

Interest on judgments for contractor claims filed with the Superior Court of Massachusetts shall be computed from the date of the breach or demand or, if not established, from the date of the action in Superior Court and shall be at the rate of three percentage points above the discount rate then charged by the Federal Reserve Bank of Boston with a cap of twelve percent.

The acceptance by the Contractor of the final payment made under the provisions of Subsection 9.05 shall operate as and shall be a release to the Party of the First Part and every member, agent and employee thereof, from all claim and liability to the Contractor for anything done or furnished for, or relating to, the work, or for any act or neglect of the Party of the First Part or of any person relating to or affecting the work, except the claim against the Party of the First Part for the remainder, if any there be, of the amounts kept or retained as provided in Subsection 7.15. For claims for extensions of time see Subsection 8.10.

7.17 Traffic Accommodation.

Any portion of the work which is in an acceptable condition for travel may be opened for traffic as directed in writing by the Engineer, but such opening for traffic shall not be construed as an acceptance of the work or part thereof, nor shall it act as a waiver of any of the provisions of these specifications or of the Contract; provided, however, that on such portions of the project as are opened for use of traffic, the Contractor shall not be required to assume any expense entailed in maintaining the roadway for traffic. The Party of the First Part will be responsible for maintenance and any damage to the work caused solely by traffic on any portion of the project which has been opened to public travel as stipulated above, and it may order the contractor to repair or replace such damage, whereupon the Contractor shall make such repairs at contract unit prices so far as the same are applicable, or as Extra Work under the provisions of Subsection 4.03 if there are no applicable items in the Contract. Any damage to the highway not attributable to traffic which might occur on such section, shall be repaired by the Contractor at his/her expense.

No hauling or other traffic shall be permitted over any portions of the work unless so authorized by the Engineer.

If the Contractor is dilatory in completing shoulders, drainage structures or other features of the work, the Engineer may order all or a portion of the project open to traffic, but in such event the Contractor shall not be relieved of his/her liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of his/her construction operations so as to cause the least obstruction to traffic.

Where the new construction coincides with the present traveled way, the Engineer may order the installation of various items of work for safety and convenience of the public due to the highway being open to traffic. The Party of the First Part will be responsible for damage to the following items of work caused solely by traffic on any portion of the project which is open to public travel and on which these items of work have been ordered to be installed and partial acceptance made thereof by the Engineer under the terms and conditions stated below.

1. Guard Rail
2. Metal Bridge Railing

3. Traffic Signal Systems
4. Highway Lighting
5. Traffic Attenuators
6. Traffic Signs

If the person or persons causing the damage has been identified, the Contractor shall be responsible for recovering the cost of such repair or replacement from that person or their insurance company. No additional unit price or extra work payment will be made by the Party of the First Part unless the Contractor has been unable to recover the full repair or replacement cost from said person or their insurance company. The Party of the First Part may order the Contractor to repair or replace such damage, whereupon the Contractor shall make such repairs at contract unit prices so far as the same are applicable or as Extra Work under the provisions of Subsection 4.03 if there are no applicable items of work in the Contract. Any damage not attributable to traffic which might occur on such traveled way shall be repaired by the Contractor at his/her own expense.

7.18 Contractor's Responsibility for the Work.

Until written acceptance of the physical work by the Chief Engineer, the Contractor shall assume full charge and care thereof and the Contractor shall take every necessary precaution against injury or damage to the work by action of the elements, or from any cause whatever, whether arising from the execution or the non-execution of the Contract, and especially when blasting is to be done.

The Contractor shall bear all losses resulting to him/her on account of the amount or the character of the work or because the nature of the land in or on which the work is done is different from what was estimated or expected, or on account of the weather elements or other causes (except as stated in Subsection 4.04, Changed Conditions).

The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the work occasioned by any of the above causes before the completion and written acceptance of the physical work, and shall bear the expense thereof, except damage to the work due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, to "Acts of God" (limited to hurricane, tornado, cyclone and earthquake as classified by the United States Weather Bureau for the particular locality and for the particular season of the year, and in addition thereto, damages resulting directly from flooding from any of the aforementioned "Acts of God"). The repair of such damages shall be done by the Contractor and paid for at the respective contract unit prices for the quantity and items of work involved. In any case in which the estimate for replacing such work or repairing such damage caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to the foregoing, or an "Act of God" combined with any previously authorized Extra Work results in a change of such magnitude as to be incompatible with competitive bid status, the Department reserves the right to terminate the Contract and to call for new bids and award a new Contract for such work. In the event any Contract is terminated for such reason the Department shall pay the Contractor such sum as may be due for work performed up to the date of the "Act of God", or of damage directly due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing and shall also take over and pay for any material stored at site of the work provided said material was intended to be and could have been incorporated into the work; the Department shall also take over and pay for any material which was being especially fabricated for incorporation into the work, provided, however, that as a condition precedent to the Department's liability for such material, the Contractor is legally liable therefor and the material was intended to be and could have been incorporated in the work.

Issuance of an estimate on any part of the work done shall not be construed as final acceptance of any work completed up to that time.

Should the Contractor fail to take prompt action whenever conditions make it necessary, the Party of the First Part shall make emergency repairs or cause the same to be made, with the stipulation that the costs for such repairs shall be charged against the Contractor and deducted from moneys due him/her.

In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at his/her expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under his/her Contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

7.19 Personal Liability of Public Officials.

In carrying out any of the provisions of these specifications, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Commissioner, Engineer, or their authorized representatives, either personally or as officials of the Commonwealth, it being understood that in all such matters they act solely as agents and representatives of the Commonwealth.

7.20 No Waiver of Legal Rights.

The Party of the First Part shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the physical completion and final acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the Contract. The Department shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or his/her sureties, or both, such damage as it may sustain by reason of his/her failure to comply with the terms of the Contract. Neither the acceptance by the Department, or any representative of the Department, nor any payment for any acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver of any portion of the Contract of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Any remedy provided in the Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and the Party of the First Part shall also be entitled as of right to a writ of injunction against any breach of the provisions of the Contract.

7.21 Preference in Employment of Labor.

In the employment of mechanics, teamsters, chauffeurs and laborers in the construction of public works by the Commonwealth, or by a county, town or district, or by persons contracting or subcontracting for such work, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined in General Laws, Chapter 4, Section 7, Clause 43, as amended and who are qualified to perform the work to which the employment relates; and secondly to citizens of the Commonwealth, generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every Contract for such work shall contain a provision to this effect. Each county, town or district in the construction of public works, or persons contracting or subcontracting for such works shall give preference to veterans and citizens who are residents of such county, town or district. The Contractor's attention is hereby directed to said Section 26 of Chapter 149 of the General Laws, as amended.

The requirements in the above paragraph do not apply to any project or part thereof, financed in whole or in part with Federal Funds.

7.22 Labor, Lodging, Board, Maximum Hours of Employment, Weekly Payment, Keeping of Payroll Records.

Every employee in public work shall lodge, board and trade where and with whom he/she elects; and no person or his/her agents or employees under Contract with the Commonwealth, a county, city or town, or with a department, board, commission or officer acting therefor, for the doing of public work, shall directly or indirectly require as a condition of employment therein, that the employee shall lodge, board or trade at a particular place or with a particular person (Chapter 149, Section 25 of the General Laws).

No laborer, workman, mechanic, foreman or inspector working within this Commonwealth, in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by this Contract, shall be required or permitted to work more than eight hours in any one day or more than 48 hours in any

one week, or more than six days in any one week, except in cases of emergency, or in case any town subject to Section 31 of Chapter 149 of the General Laws is a party to such a Contract, more than eight hours in any one day, except as aforesaid. The Department or the Contractor or any Subcontractor may employ laborers, Workmen, mechanics, foremen and inspectors for more than eight hours in any one day in the work to be done or under Contract when, in the opinion of the Commissioner of Labor and Industries, public necessity so requires. (Chapter 149, Section 34 of the General Laws, as amended.)

Attention of Bidders is called to Section 148 of Chapter 149 of the General Laws and amendments thereof requiring the weekly payment of employees.

Upon request of the Engineer or the Massachusetts Department of Labor and Industries, the Contractor shall furnish certified copies of any or all payrolls for the Contract, showing the name, address, and occupational classification of each employee on said works, and the hours worked by, and the wages paid to each such employee. Such payroll shall also include the rates paid for rented trucks or rental equipment of any kind used on the work. This requirement shall also apply to the work or any Subcontractor, having a Subcontract for any of the work performed on the project. Such records shall be kept in such manner as the Commissioner of Labor and Industries shall prescribe, and shall be open to inspection by the Engineer or any authorized representative of the Department of Labor and Industries at any reasonable time and as often as may be necessary.

In the case the work covered by this Contract is financed from Federal Funds, the above provisions relative to the hours of employment shall be subject to such revision and amendment as are required by the Rules and Regulations controlling the expenditures of such Federal Funds.

7.23 Archeological and Paleontological Discoveries.

The Contractor's attention is directed to the United States Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 7, Chapter 7, Section 4, subject "Archeological and Paleontological Salvage", incorporating Policy and Procedure Memorandum 20-7, dated March 31, 1971, and to the Commonwealth of Massachusetts, Acts of 1973, Chapter 1155. In compliance with these procedures and legislation, the contractor shall exercise special care during his/her operations to avoid injury to underground prehistoric and historic archeological remains or paleontological remains. Should any archeological or paleontological remains be encountered during any phase of construction, the contractor shall immediately suspend all work in the area and shall notify the Engineer. The Engineer shall immediately notify the State Archeologist and the Massachusetts Historical Commission. All Construction work in that area will be temporarily delayed while the State Archeologist and Representatives of Massachusetts Historical Commission inspect the site to determine the importance of the discovery. Areas of prehistorical, historical, or paleontological significance shall be carefully protected in accordance with Section 7.18 and shall not be disturbed by the Contractor until so directed by the Engineer.